

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:	David A. Baucom	Customer No:	23,444
Serial No.:	10/042,758	Group No.:	3723
Date Filed:	10/01/2002	Attorney Docket No.	BAM001C/149614
For:	Pneumatic Lift and Movement System for Shelving	Examiner:	Christopher M. Koehler

Mail Stop Amendment
 Commissioner for Patents
 P.O. Box 1450
 Alexandria, VA 22313-1450

RESPONSE TO OFFICE ACTION

Dear Examiner:

In response to the Office Action of 21 March 2007, Applicant elects Species A, claim 2, drawn to fluid energized lift components via a controllable pressurized fluid supply. However, Applicant respectfully traverses the restriction requirement.

The Office Action of 21 March 2007 requires restriction to one of the following species:

- I. Species A, claim 2, drawn to fluid energized lift components via a controllable pressurized fluid supply.
- II. Species B, claim 3, drawn to pneumatic energized lift components via a supply manifold.
- III. Species C, claim 4, drawn to pneumatic energized bladder type lift components via a pressure regulator.

The Examiner alleges that the species are independent or distinct, because they are alternative means of energizing the lift components. There are, however, two criteria for a proper requirement for restriction between patentably distinct inventions: (A) the inventions must be independent or distinct as claimed; and (B) there must be a serious burden on the examiner if restriction is not required. MPEP §803 Applicant respectfully traverses Examiner's requirement for restriction, because the identified species are not independent or distinct (i.e. they are not alternative means of energizing the lift components). Furthermore, Applicant submits that the examination of *three* species would not be "more than a reasonable number of species" thereby causing a serious burden on the Examiner and thus requiring election of species prior to the first action. 37 CFR §1.146.

To be "independent," there must not be a disclosed relationship between the two or more species disclosed, that is, they must not be connected in design, operation, or effect. MPEP §802.01 Applicant submits that Species A, B, and C, as identified by the Examiner, are connected in design, operation, or effect. Species A, for example, requires the lift elements to be "fluid energized." Species B and C require the lift elements to be "pneumatically energized." Pneumatic is defined as "of, relating to, or *using air, wind or other gas*." Webster's Third New International Dictionary. Similarly, fluid is defined as "a substance that alters its shape in response to any force however small, that tends to flow or to conform to the outline of its container, *and that includes gases* and liquids...." Id. Thus, Species A, B, and C are connected in that they each require a "fluid" to energize the lift elements.

Species A also requires "a controllable pressurized fluid supply...in fluid communication with each of said fluid energized lift elements." Species B requires "a source of pressurized gas ...and at least one supply manifold line...in fluid communication with...each of said fluid

energized lift elements.” Species C requires “a container of pressurized gas...and.. a pressure regulator for...controllably admitting pressurized gas...to each of...the lift elements.” The “source of pressurized gas” of Species B and the “container of pressurized gas” of Species C are analogous to the “pressurized fluid supply” of Species A. Furthermore, the “supply manifold” of Species B allows the “source of pressurized gas” to be “controllable” as in Species A. Similarly, the “pressure regulator” of Species C allows for “controllably admitting pressured gas.” Thus, Species A, B, and C are not independent, because they are connected in design, operation, or effect -- i.e. fluid energized lift elements via a controllable pressurized fluid supply in fluid communication with each of said fluid energized lift elements.

To be “distinct,” the two or more species must be capable of separate manufacture, use, or sale as claimed, and be patentable over each other. MPEP §802.01. Applicant submits that the Species B and C, as identified by Examiner, would appear not to be patentable over Species A, because Species B and C comprise fluid energized lift elements and a controllable pressurized fluid supply in fluid communication with each of said fluid energized lift elements, the same as in Species A. As between Species B and C, a supply manifold (i.e. a piping arrangement for supplying fluid from a source to several lift elements) is inherently disclosed in Species C, because Species C requires “*a* container of pressurized gas that has a pressure regulator and *control valving* for controllably admitting pressurized gas *simultaneously to each* of the...lift elements.” Thus, Species C would appear not to be patentable over Species B, because Species C comprises a pneumatic energized bladder type lift element, a source of pressurized gas, and at least one supply manifold line in fluid communication with each of said fluid energized lift elements, the same as in Species B. Because the Species A, B, and C would appear not to be patentable over each other, they cannot be “distinct” as defined under MPEP §802.01.

MPEP §806.05 states that if two or more related inventions are not distinct, then restriction is *never* proper. For the reasons stated above, the Species A, B, and C, as identified by the Examiner, are related and not distinct. Therefore, restriction is improper. Applicant strongly urges the Examiner to withdraw the restriction requirement and examine all of Applicant's claims on the merits.

Respectfully submitted,

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